

the meanings assigned to them in section 7701.

(Secs. 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954)

[T.D. 7977, 49 FR 36836, Sept. 20, 1984]

**§ 301.7701-17T Collective-bargaining plans and agreements (temporary).**

Q-1: How did the Tax Reform Act of 1984 (TRA of 1984) change the laws with respect to plans that are maintained pursuant to collective bargaining agreements?

A-1: (a) Many of the requirements and rules applicable to deferred compensation and welfare benefit plans are different for plans maintained pursuant to a collective bargaining agreement. Prior to the TRA of 1984, the Internal Revenue Code provided no clear definition of an employee representative or whether there is a collective bargaining agreement between such employee representative and one or more employers.

(b) Section 526(c) of the TRA of 1984 added a new condition under a new section 7701(a)(46) that must be satisfied in order for a plan to be considered to be a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers for purposes of the Code after March 31, 1984. If more than one-half of the membership of an organization is comprised of owners, officers, and executives of employers covered by the plan, then such organization is not an employee representative for purposes of determining whether a plan is to be treated as maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers. Whether an individual is an owner, officer or executive is to be determined separately with respect to each employer. Additionally, section 7701(a)(46) provides that the Internal Revenue Service shall make the determination for purposes of the Code as to whether there is a collective bargaining agreement between employee representatives and one or more employers.

Q-2: If an organization does not fail to be an employee representative under the 50 percent or less test of section

7701(a)(46), is a plan maintained pursuant to an agreement between such organization and one or more employers necessarily treated, under the Code, as a plan maintained pursuant to a collective bargaining agreement between an employee representative and one or more employers?

A-2: (a) No.

(b) Specific Code provisions generally require other conditions than that in section 7701(a)(46) to be satisfied in order for a plan to be considered to be collectively-bargained. For example, in order for a plan to be described in section 413(a), the Secretary of Labor must find that the plan is maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers.

(c) Even if (1) the finding in the example in the preceding paragraph (b) is made by the Secretary of Labor, (2) the union has been recognized as exempt under section 501(c)(5), and (3) the percentage condition in section 7701(a)(46) is satisfied, the Internal Revenue Service has the authority, pursuant to section 7701(a)(46), to determine whether there is a collective bargaining agreement under the Code.

[T.D. 8073, 51 FR 4337, Feb. 4, 1986]

**§ 301.7701(b)-0 Outline of regulation provision for section 7701(b)-1 through (b)-9.**

This section lists the paragraphs contained in §§ 301.7701(b)-1 through 301.7701(b)-9.

*§ 301.7701(b)-1 Resident alien.*

- (a) Scope.
- (b) Lawful permanent resident.
  - (1) Green card test.
  - (2) Rescission of resident status.
  - (3) Administrative or judicial determination of abandonment of resident status.
- (c) Substantial presence test.
  - (i) In general.
  - (2) Determination of presence.
  - (i) Physical presence.
  - (ii) United States.
  - (3) Current year.
  - (4) Thirty-one day minimum.
- (d) Application of section 7701(b) to the possessions and territories.
  - (1) Application to aliens.
  - (2) Non-application to citizens.
  - (e) Examples.

## § 301.7701(b)-0

## 26 CFR Ch. I (4-1-04 Edition)

### *§ 301.7701(b)-2 Closer connection exception.*

- (a) In general.
- (b) Foreign country.
- (c) Tax home.
- (1) Definition.
- (2) Duration and nature of tax home.
- (d) Closer connection to a foreign country.
- (1) In general.
- (2) Permanent home.
- (e) Special rule.
- (f) Closer connection exception unavailable.
- (g) Filing requirements.

### *§ 301.7701(b)-3 Days of presence in the United States that are excluded for purposes of section 7701(b).*

- (a) In general.
- (b) Exempt individuals.
- (1) In general.
- (2) Foreign government-related individual.
- (i) In general.
- (ii) Definition of international organization.
- (iii) Full-time diplomatic or consular status.
- (3) Teacher or trainee.
- (4) Student.
- (5) Professional athlete.
- (6) Substantial compliance.
- (7) Limitation on teacher or trainee and student exemptions.
- (i) Teacher or trainee limitation in general.
- (ii) Special teacher or trainee limitation for section 872(b)(3) compensation.
- (iii) Limitation on student exemption.
- (iv) Transition rule.
- (v) Examples.
- (8) Immediate family.
- (c) Medical condition.
- (1) In general.
- (2) Intent to leave the United States.
- (3) Preexisting medical condition.
- (4) Examples.
- (d) Days in transit.
- (e) Regular commuters from Mexico or Canada.
- (1) General rule.
- (2) Definitions.
- (3) Examples.
- (f) Determination of excluded days applies beyond year of determination.

### *§ 301.7701(b)-4 Residency time periods.*

- (a) First year of residency.
- (b) Last year of residency.
- (1) General rule.
- (2) Exceptions.
- (c) Rules relating to residency starting date and residency termination date.
- (1) De minimis presence.
- (2) Proration.
- (3) Residency starting date for certain individuals.
- (i) In general.

- (ii) Determination of presence.
- (iii) Thirty-one day period.
- (iv) Period of continuous presence.
- (v) Election procedure.
- (A) Filing requirements.
- (B) Election on behalf of a dependent child.
- (C) Statement.
- (vi) Penalty for failure to comply with filing requirements.
- (A) General rule.
- (B) Exception.
- (d) Examples.
- (e) No lapse.
- (1) Residency in prior year.
- (2) Residency in following year.
- (3) Special rule.
- (4) Example.

### *§ 301.7701(b)-5 Coordination with section 877.*

- (a) General rule.
- (b) Tax imposed.
- (c) Example.

### *§ 301.7701(b)-6 Taxable year.*

- (a) In general.
- (b) Examples.

### *§ 301.7701(b)-7 Coordination with income tax treaties.*

- (a) Consistency requirement.
- (1) Application.
- (2) Computation of tax liability.
- (3) Other Internal Revenue Code purposes.
- (4) Special rules for S corporations. [Reserved]
- (b) Filing requirements.
- (c) Contents of statement.
- (1) In general.
- (i) Returns due after December 15, 1997.
- (ii) Earlier returns.
- (2) Controlled foreign corporation shareholders.
- (3) S corporation shareholders. [Reserved]
- (d) Relationship to section 6114(a) treaty-based return positions.
- (e) Examples.

### *§ 301.7701(b)-8 Procedural rules.*

- (a) Who must file.
- (1) Closer connection exception.
- (2) Exempt individuals and individuals with a medical condition.
- (3) De minimis presence and residency starting and termination dates.
- (b) Contents of statement.
- (1) Closer connection exception.
- (i) Returns due after December 15, 1997.
- (ii) Earlier returns.
- (2) Exempt individuals and individuals with a medical condition.
- (i) Returns due after December 15, 1997.
- (ii) Earlier returns.
- (3) De minimis presence and residency starting and termination dates.
- (c) How to file.
- (d) Penalty for failure to file statement.

- (1) General rule.
- (2) Exception.
- (e) Filing requirement disregarded.

*§ 301.7701(b)-9 Effective dates of §§ 301.7701(b)-1 through 301.7701(b)-7.*

- (a) In general.
- (b) Special rules.
  - (1) Green card test-residency starting date.
  - (2) Substantial presence test-years included.
  - (3) Professional athletes.
  - (4) Procedural rules and filing requirements.

[T.D. 8411, 57 FR 15241, Apr. 27, 1992; 58 FR 17516, Apr. 5, 1993; as amended by T.D. 8733, 62 FR 53386, Oct. 14, 1997]

#### **§ 301.7701(b)-1 Resident alien.**

(a) *Scope.* Section 301.7701(b)-1(b) provides rules for determining whether an alien individual is a lawful permanent resident of the United States. Section 301.7701(b)-1(c) provides rules for determining if an alien individual satisfies the substantial presence test. Section 301.7701(b)-2 provides rules for determining when an alien individual will be considered to maintain a tax home in a foreign country and to have a closer connection to that foreign country. Section 301.7701(b)-3 provides rules for determining if an individual is an exempt individual because of his or her status as a foreign government-related individual, teacher, trainee, student, or professional athlete. Section 301.7701(b)-3 also provides rules for determining whether an individual may exclude days of presence in the United States because the individual was unable to leave the United States because of a medical condition. Section 301.7701(b)-4 provides rules for determining an individual's residency starting and termination dates. Section 301.7701(b)-5 provides rules for applying section 877 to a nonresident alien individual. Section 301.7701(b)-6 provides rules for determining the taxable year of an alien. Section 301.7701(b)-7 provides rules for determining the effect of these regulations on rules in tax conventions to which the United States is a party. Section 301.7701(b)-8 provides procedural rules for establishing that an individual is a nonresident alien. Section 301.7701(b)-9 provides the effective dates of section 7701(b) and the regulations under that section. Un-

less the context indicates otherwise, the regulations under §§ 301.7701(b)-1 through 301.7701(b)-9 apply for purposes of determining whether a United States citizen is also a resident of the United States. (This determination may be relevant, for example, to the application of section 861(a)(1) which treats income from interest-bearing obligations of residents as income from sources within the United States.) The regulations do not apply and §§ 1.871-2 and 1.871-5 of this chapter continue to apply for purposes of the bona fide residence test of section 911. See § 1.911-2(c) of this chapter. For purposes of determining whether an individual is a resident of the United States for estate and gift tax purposes, see § 20.0-1(b)(1) and (2) and § 25.2501-1(b) of this chapter, respectively.

(b) *Lawful permanent resident—(1) Green card test.* An alien is a resident alien with respect to a calendar year if the individual is a lawful permanent resident at any time during the calendar year. A lawful permanent resident is an individual who has been lawfully granted the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws. Resident status is deemed to continue unless it is rescinded or administratively or judicially determined to have been abandoned.

(2) *Rescission of resident status.* Resident status is considered to be rescinded if a final administrative or judicial order of exclusion or deportation is issued regarding the alien individual. For purposes of this paragraph, the term "final judicial order" means an order that is no longer subject to appeal to a higher court of competent jurisdiction.

(3) *Administrative or judicial determination of abandonment of resident status.* An administrative or judicial determination of abandonment of resident status may be initiated by the alien individual, the Immigration and Naturalization Service (INS), or a consular officer. If the alien initiates this determination, resident status is considered to be abandoned when the individual's application for abandonment (INS Form I-407) or a letter stating the alien's intent to abandon his or her